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August 2007

Special Audit: Property Transactions in the Seven Oaks School Division

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OFFICE OF THE
AUDITOR GENERAL
MANITOBA

August 2007

The Honourable George Hickes
Speaker of the House
Room 244, Legislative Building
Winnipeg, Manitoba
R3C 0V8

Dear Sir:

I have the honour to transmit herewith my report titled, *Special Audit: Property Transactions in the Seven Oaks School Division*, to be laid before Members of the Legislative Assembly in accordance with the provisions of Section 28 of The Auditor General Act.

Our audit was carried out under the authority of Section 15(1) of The Auditor General Act which permits us to conduct an examination and audit in respect of public money, in accordance with Section 14(1) of the Act which describes those matters which we may examine. The Seven Oaks School Division (SOSD) was created under The Public Schools Act and is governed directly by an elected board of trustees. SOSD receives its funding through the Public Schools Finance Board (PSFB) which is directly accountable to the Minister of Education.

With multiple stakeholders comes the need for additional effort at clear communication. In the case of the property development activities at SOSD, it is my opinion that the trustees did what they believed was in the best interest of their school division. With respect to the disposition of vacant surplus land in Swinford Park, SOSD, acting as a land developer, had subdivided, serviced and sold residential lots but The Public Schools Act does not specifically permit school divisions to develop land. SOSD indicated to us that they believed the Act was sufficiently vague in this area to permit the activity. PSFB indicated to us that they were not aware that the development activity was taking place until after the lots had already been sold. The end result of the activities was a net income

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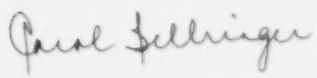
to SOSD of $512,118 related to land sales. This remains invested in surplus land which is still owned by SOSD, with a total cost of $819,810.

Our recommendations relate to the seven audit objectives described in our report. Amendments have already been made to The Public Schools Act and The Public Schools Finance Board Act which address most of our concerns. In addition to the recommendations included in our report, we urge the PSFB and the school divisions to continually seek ways to improve communications in the mutual interest of the students and communities they serve.

Respectfully submitted,



Carol Bellringer, FCA, MBA
Auditor General

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1.0 Summary of Audit Findings

In February 2003, the Public Schools Finance Board (PSFB) authorized Seven Oaks School Division (SOSD) to dispose of vacant surplus land in the area of Winnipeg known as Swinford Park. Subsequently, SOSD acting as a land developer, subdivided, serviced and sold residential lots created from the surplus land in the Swinford Park area.

In August 2005, the Office of the Auditor General (OAG) received a letter that expressed concerns about the disposition by SOSD of the surplus lands in Swinford Park. These concerns related to the legality of a school division acting as a land developer; placing public funds at risk; and, whether SOSD had followed appropriate land disposition processes. Concerns were also raised relating to the appropriateness of the PSFB process for the awarding of a new high school to SOSD and whether or not PSFB, who was responsible for authorizing the dispositions, had ensured that the appropriate processes were followed in the Swinford Park dispositions. These concerns, along with issues related to alleged conflicts of interest as well as a related citizen complaint to the Minister of Education, Citizenship and Youth (Minister) from 2004, had been the subject of debate in the Manitoba Legislature in May and June of 2005.

Based on these concerns, on January 30, 2006, the OAG sent letters to the Minister, the Chairperson of PSFB and the Chairperson of SOSD advising them that the OAG would be conducting an audit of the acquisition and disposition of the Swinford Park properties. The audit was also designed to address the awarding of the new high school and to determine if there were other land transactions.

Our objectives in conducting this audit were as follows:

- To determine whether the SOSD was in compliance with The Public Schools Act (PSA) in the acquisition of properties for future school needs;
- To determine whether SOSD's disposition of the surplus school lands in Swinford Park was in compliance with the PSA and the PSFB Disposition Policy;
- To determine whether PSFB policies, procedures and practices were adequate to ensure the Swinford Park transactions were in compliance with the PSA and the PSFB Disposition Policy;
- To determine whether SOSD had undertaken land development activity prior to Swinford Park and/or was planning any further land development activity;
- To determine whether SOSD had undertaken other dispositions of surplus school lands and if so, whether the dispositions were in compliance with the PSA and the PSFB Disposition Policy;

- To determine whether PSFB's decision process to approve a new high school to replace West Kildonan Collegiate Institute (WKCI) was clear and transparent and whether that decision process had been influenced by relationships between individuals at PSFB and SOSD; and
- To determine whether the Department gave full and appropriate consideration to the 2004 citizen complaint with respect to Swinford Park.

The audit was carried out under the authority of the following Sections of *The Auditor General Act*:

> Section 14(1) In carrying out his or her responsibilities under this Act, the Auditor General may examine and audit the operations of a government organization with regard to any of the following matters:
>
> a) whether financial and administrative provisions of Acts, regulations, policies and directives have been complied with;
>
> (b) whether public money has been expended with proper regard for economy and efficiency;
>
> (c) whether the Assembly has been provided with appropriate accountability information;
>
> (d) whether the form and content of financial information documents is adequate and suitable.
>
> Section 15(1) the Auditor General may conduct an examination and audit in respect of public money received by a recipient of public money, including the matters listed in subsection 14(1), and may require the recipient to prepare and give to the Auditor General the financial statements setting out the details of the disposition of the public money received.

Our audit covered the period January 1998 to May 2006 and was conducted between February 2006 and November 2006. We conducted an extensive review of Department, PSFB and SOSD documentation and correspondence. This audit included numerous interviews with Department personnel, current and former PSFB and SOSD board members and staff, and other individuals who were identified during our audit as having pertinent information.

We reviewed our draft audit report with officials, former officials, trustees and former trustees of the SOSD, with officials, board members, former board members and the former Executive Director of the PSFB, as well as officials of the Department. Their comments were taken into consideration in finalizing this audit report. Detailed comments from the PSFB and the Department are included in Section 5.0.

A glossary of terms and acronyms utilized in this report can be found in **Appendix A**.

The following table provides a summary of the areas examined and our related conclusions:

Objectives	Conclusions
Section 3.2 To determine whether SOSD was in compliance with The Public Schools Act (PSA) in the acquisition of properties for future school needs.	• SOSD was in compliance with the PSA in the acquisition of properties for future school needs. Prior to June 2006, the PSA allowed school divisions to acquire land for future school needs without PSFB approval.
Section 3.3 To determine whether SOSD's disposition of the surplus school lands in Swinford Park was in compliance with the PSA and the PSFB Disposition Policy.	**Seven Oaks School Division** • Given that residential land development activities by a school board are not specifically allowed for in the PSA, it is arguable that SOSD was not in compliance with the PSA when it undertook residential land development activities in Swinford Park. In the circumstances, it would have been prudent for the SOSD to have obtained legal advice before undertaking such activities.
	• By not notifying PSFB of all tenders received, SOSD did not comply with Subsections 3.2 and 3.3 of Section V of the PSFB Disposition Policy. The tenders for the sale of the Swinford Park lots clearly outlined SOSD's responsibility to service the residential lots. Although all the tenders were rejected by SOSD, the submission to PSFB of the tender results followed by the required tender review meeting would have provided PSFB with an opportunity to intervene or discontinue the project in July 2003, prior to the commencement of development activities.
	• PSFB's motion to authorize SOSD to dispose of surplus school lands in Swinford Park required that SOSD submit the Lot Sale Agreements (LSAs) to PSFB for approval prior to closure of the sale for each property. The LSAs for the sale of the Swinford Park lots clearly outlined SOSD's responsibility to service the residential lots. LSAs were not submitted to PSFB prior to finalization by SOSD. Had the LSAs been submitted to PSFB for approval prior to finalization, PSFB would have been provided with another opportunity to intervene or discontinue the project in September 2003.

Objectives	Conclusions
	• The disposition process utilized by SOSD did not comply with the PSA, the PSFB Disposition Policy nor the PSFB motion authorizing SOSD to dispose of the surplus school lands in Swinford Park. However, the land management and sale processes that were used by SOSD to dispose of the Swinford Park properties were not unreasonable. SOSD hired a reputable planner to provide land management expertise and oversee the project, obtained authorization from PSFB for the dispositions, and reduced the financial risk associated with developing a residential subdivision by pre-selling lots prior to undertaking the servicing of these lots.
	• SOSD staff recognized that there is a risk of financial loss inherent in any land development activity. SOSD took steps which mitigated but did not eliminate the risk of loss of public funds expended in developing Swinford Park.
	• SOSD's accounting for the Swinford Park transactions was not adequate to provide the SOSD Board and staff with sufficient information to determine the financial position of the project at a given point in time.
	• The transactions between SOSD and the private landowners for the acquisition and disposition of the Swinford Park properties, while complicated, were fully documented and we found no evidence to suggest that anyone unduly benefited from those transactions.
	• The end result of the Swinford Park land development by SOSD was a "net income" of $512,118 to the school division, however, this entire amount and an additional $307,692 remain invested in surplus land with a total net book value at January 31, 2006 of $819,810.
	• None of the SOSD Board members or senior management were listed as title holders of the Swinford Park properties.
	• Although some of SOSD's correspondence may not have been as clearly written as it could have been, we believe it provided the essential information required to understand SOSD's intentions to develop serviced residential lots in Swinford Park.

Objectives	Conclusions
To determine whether PSFB policies, procedures and practices were adequate to ensure the Swinford Park transactions were in compliance with the PSA and the PSFB Disposition Policy.	**Public Schools Finance Board** • In our opinion, PSFB policies, procedures and practices were not adequate to ensure that SOSD's disposition of surplus school lands in Swinford Park were in compliance with the PSA. Given that residential land development activities by a school board are not specifically allowed for in the PSA, it is arguable that SOSD was not in compliance with the PSA when it undertook residential land development activities in Swinford Park. Based on meetings with and correspondence provided to PSFB by SOSD in April 2003, we believe that some PSFB staff knew or should have known of SOSD's intended development activities. Further, we believe that the PSFB Board members knew or should have known of SOSD's development activities no later than May 5, 2004, when they approved the Lot Sale Agreements (LSAs) submitted by SOSD. A reading of the LSAs would have made PSFB aware that SOSD was acting as a land developer.
	• In our opinion, PSFB procedures and practices were not adequate to ensure that SOSD's disposition of surplus school lands in Swinford Park were in compliance with the PSFB Disposition Policy. The motion that approved the sale of the Swinford Park lots required SOSD to provide copies of the LSAs to PSFB for approval prior to their having been signed and completed and that the PSFB Disposition Policy be followed. PSFB did not have a formal process in place to follow up and ensure compliance with the requirements of their motions. In this instance, no follow up of this motion took place. Had PSFB followed up on this motion they would have given themselves the opportunity to intervene or discontinue the Swinford Park project.
	• PSFB approved the LSAs as submitted in May 2004, without informing or consulting with the Deputy Minister and/or the Minister of the Department.
	• There was considerable confusion at PSFB as to whether the PSFB Disposition Policy was a policy requiring compliance or a guideline with no effective power. As well, the PSFB staff and Board were not knowledgeable of the sections of the PSA that pertained to the PSFB Disposition Policy. This resulted in inconsistent application of the Disposition Policy.

Objectives	Conclusions
	• In our opinion, SOSD's correspondence to PSFB provided the essential information required to identify their intention to undertake land development activities in Swinford Park. Although we believe that in certain instances SOSD's intentions may not have been clearly communicated to PSFB, we found no evidence that SOSD intended to mislead PSFB, or to obscure its intended development activities from PSFB. Had the PSFB staff undertaken a thorough review of that correspondence, we believe that SOSD's intentions would have been apparent.
	• Neither the Minister, the Deputy Minister nor any of the PSFB Board members or senior management were listed as title holders of the Swinford Park properties.
Section 3.4 To determine whether SOSD had undertaken land development activity prior to Swinford Park and/or was planning any further land development activity.	• SOSD had not undertaken land development activities prior to Swinford Park. SOSD was not planning any further land development activities other than Leila North.
	• In compliance with the PSA, SOSD obtained authorization from PSFB for the disposal of the surplus Leila North property.
	• The PSFB staff did not recognize SOSD's intention to explore future development of the surplus Leila North property. SOSD was exploring options for the development of the Leila North property and indicated this to PSFB when they requested PSFB's authorization to set up a Capital Reserve.
Section 3.5 To determine whether SOSD had undertaken other dispositions of surplus school lands and if so, whether the dispositions were in compliance with the PSA and the PSFB Disposition Policy.	• SOSD had undertaken one other disposition of school land at the Red River school site. • In compliance with the PSA, SOSD obtained authorization from PSFB for the disposal of the surplus Red River School site.
	• SOSD provided PSFB with all information required under the PSFB Disposition Policy in a timely manner and fully complied with all requirements of the Disposition Policy in disposing of the surplus Red River School site. By complying with all the Disposition Policy requirements SOSD indicated that they were aware of the disposition process.

Objectives	Conclusions
	• PSFB had no policy or process in place to ensure that their motions were followed up. PSFB staff did not follow-up on the PSFB motion requiring that SOSD remit 50% of the net proceeds of the sale of the Red River School site to PSFB.
	• If PSFB had been advised by their staff that they were required to rescind the motion that required SOSD to remit 50% of net proceeds of the sale of the Red River School site, they took no action to do so. If PSFB had not been advised, then their staff did not provide the Board essential information in a timely manner.
Section 3.6 To determine whether PSFB's decision process to approve a new high school to replace West Kildonan Collegiate Institute (WKCI) was clear and transparent and whether that decision process had been influenced by relationships between individuals at PSFB and SOSD.	• A major renovation of WKCI was recommended by PSFB in March 2002 and approved by the Minister. In February 2005, this decision was altered with PSFB's recommendation, approved by the Minister, to build a new high school rather than proceed with the renovation.
	• In our opinion, PSFB's decision process to approve a major renovation of WKCI was not clear and transparent. PSFB had established criteria which were to be utilized in the prioritization of major capital projects and a significant number of the criteria specified by PSFB were applicable to the WKCI renovation project. However, PSFB does not utilize a documented formal rating system to prioritize major capital projects and, as a result, we were unable to ascertain how, or if, PSFB prioritized this renovation project against any other requested projects.
	• In our opinion, the decision process to approve a new high school to replace WKCI was clear and transparent, based on PSFB policy, and was not influenced by relationships between individuals at PSFB and SOSD. The decision to build a new high school was reached following a lengthy process of exploring alternatives to new construction and culminated with the realization that renovations to the existing WKCI would not be cost effective.

Objectives	Conclusions
Section 3.7 To determine whether the Department gave full and appropriate consideration to the citizen complaint with respect to Swinford Park.	• The Department did not give full and appropriate consideration to the citizen complaint with respect to Swinford Park. In this instance, the Department's process for responding to citizen complaints did not identify the issues outlined in the complaint and did not ensure that the provided response addressed the issues in the complaint.
	• The response drafted for the Minister by PSFB did not address the citizen's complaint. Had the response addressed the complainant's question relating to the authority of SOSD to act as a land developer, the Minister could have had an opportunity to address this issue and consider the Department's options at that time.
	• The process of addressing citizen complains was changed in 2005 to improve information provided to the Minister by the Department.

2.0 Roles and Responsibilities

2.1 Seven Oaks School Division

School divisions and school boards are created under *The Public Schools Act* (PSA). The preamble of the PSA notes that the purpose of the public school system is to serve the best educational interests of students.

Seven Oaks School Division (SOSD) is located in north Winnipeg and includes the Rural Municipality of West St. Paul and a portion of the Rural Municipality of St. Andrews. SOSD has approximately 9,000 students enrolled in 20 schools (17 elementary and 3 secondary). The Board of SOSD consists of 9 elected trustees (8 urban and 1 rural).

The powers and duties of a school board are defined in the PSA under the following sections:

- Section 3(1) states that every school board is a body corporate.
- Section 3(3) states that from the effective date of its incorporation, a school board has the powers granted to it, and is responsible for the performance of the duties and is subject to the liabilities charged upon it, under this Act.

- Section 41(1) provides a listing of duties that every school board shall perform. Pertinent to this audit is subsection 41(1)(o) whereby every school board shall select and purchase or rent school sites and premises, and build, repair, furnish, keep in order and regulate the use of the school buildings, lands, enclosures and movable property.
- Section 61 states that where a school site or an additional school site or a change in school site is required in a school division or school district the school board may select the site or may change a school site.
- Section 67 states that subject to Section 174, a school board may dispose of any school site or school property not required by the school board.
- Section 174(1) states that subject to any regulations made under The Education Administration Act (EAA), the school board of a school division shall not dispose of any land or buildings owned by it, or any interest or right therein, by way of sale, lease, gift or otherwise, unless it first obtains the authorization of PSFB and, where PSFB authorizes the disposal of any land or buildings owned by a school board, or any interest or right therein, it may require that the moneys realized from the disposal be paid over to the fund.

There are no relevant regulations relating to the disposition of land and/or buildings made under the PSA or the EAA.

2.2 Public Schools Finance Board and The Schools' Finance Branch

Public Schools Finance Board (PSFB) was established by *The Public Schools Finance Board Act* in April, 1967. During the timeframe of this audit, the PSFB consisted of not more than five persons appointed by the Lieutenant Governor in Council, through an Order-In-Council. The Lieutenant Governor in Council appointed one of the members of the Board as Chair, and another member as Vice-Chair.

PSFB reports to the Minister through the Deputy Minister of the Department.

PSFB receives all monies paid into the Education Support Fund (Fund) from which PSFB provides financing for public schooling in Manitoba. The Fund is comprised of monies provided by the Province from general revenue and from the Education Support Levy, a province-wide tax based on property ownership used to support provincial education.

The Fund provides provincial educational funding through two programs administered by PSFB. PSFB determines the amount of and then disburses grants for capital projects to Manitoba school divisions through the Capital Support

Program. PSFB also issues payments to Manitoba school divisions for general operating purposes in amounts as determined by the Minister through the Operational Support Program.

PSFB is also responsible for approving the disposition of surplus school property through the administration of the *Policy Statement Governing the Disposition of Surplus Public School Properties* (Disposition Policy). This policy was approved by the Minister of Education and Training of the day and was sent to all chairpersons of school divisions and districts on December 9, 1992. Attached to this policy was a cover letter stating that the policy had been implemented by PSFB effective November 1992.

In order to assist PSFB in carrying out its responsibilities for the Capital Support Program, the Schools' Finance Branch (SFB) of the Department provides PSFB with accounting, financial and administrative support.

School divisions may also establish Capital Reserves for the purpose of funding specific capital projects with the approval of PSFB in accordance with Section 200 of the PSA.

2.3 Subsequent Event

During the course of our audit, on June 13, 2006, the Manitoba Legislature enacted *The Public Schools Finance Board Amendment* and *The Public Schools Amendment Act.*

This Act amended *The Public Schools Act* to require school boards to obtain PSFB approval before purchasing land.

This Act amended *The Public Schools Finance Board Act* in several respects including the following:

- New accountability provisions were added for PSFB, requiring it to consult regularly with school divisions, develop multi-year operating and capital plans, conduct an organizational and operating review every five years, and adopt a conflict of interest policy.
- The mandate of PSFB in administering the capital support program for schools is now fully described. PSFB must consider specific factors in making decisions about capital support. It must also prepare an annual funding plan for the capital support it provides.
- School divisions must submit a five-year capital plan to PSFB each year. New provisions were added to clarify how school divisions make submissions to PSFB for major capital projects.

- A school board may not call for tenders on a major capital project until PSFB approves the project.
- The membership of PSFB is now comprised of three deputy ministers of the government, with the deputy minister of the Department serving as chair.

3.0 Audit Findings

3.1 Background

In February 2003, PSFB authorized SOSD to dispose of vacant surplus land in the Swinford Park and Leila North areas of Winnipeg. SOSD, acting as a land developer, had subdivided, serviced and sold residential lots created from surplus land in the Swinford Park area. This development consisted of three phases, two of which had been completed by the fall of 2003.

In late August 2004, the SFB of the Department became aware of SOSD's land development activities. They notified PSFB and SOSD in early September that land development by a school division was outside the authority of the PSA. In September 2004, SOSD sought PSFB authorization for the sale of lots in the third phase, known as Grady Bend. On March 16, 2005, PSFB passed a motion and advised SOSD that the sale of the Grady Bend lots had been approved.

When SFB became aware of the land development activities, they recommended an evaluation of the proposed sale of the Grady Bend lots be undertaken to satisfy PSFB that there was no financial risk and that an external source be utilized for this evaluation. On October 26, 2004 PSFB contracted with Land Management Services (LMS) to prepare a "forensic analysis" of the completed phases and a "feasibility/risk analysis" of the Grady Bend phase of the Swinford Park development. LMS is a Special Operating Agency of the Province of Manitoba that provides real estate services to various levels of governments, departments, boards, commissions, corporations, agencies and clients.

The LMS analysis, completed and received by PSFB in February 2005, reported amongst other things that:

- *"The project's initial, completed phases have resulted in a modest but positive financial result for the School Division, and this would remain the case, were the Division's development activities terminated now."*
- *"The School Division took on some risk when it commenced the first stage of the development, and has achieved only a modest return. However, the 'ground work' for completion of Phase 3 [Grady Bend] is in-place, and all indications suggest that this would be a very low-risk and profitable venture."*

- *"The School Division's income statement is not consistent with the quality of financial reporting warranted by a commercial venture of this scale. Any review of the project's financial performance or point-in-time risk assessment is hindered by the quality of the available financial information."*
- *"[One tract of] ... raw land was acquired via a complex of agreements between 3 parties. It was a relatively high-cost acquisition, and it appears that a major land developer may have been the beneficiary. These transactions are not fully documented; we have insufficient information to comment on due diligence with respect to this land acquisition."*

Before authorizing SOSD to finalize the sale of the Grady Bend lots, PSFB passed a motion on November 3, 2004 to obtain an opinion from Civil Legal Services (CLS) regarding their authority to permit school divisions to participate in activities outside the defined general powers of school boards as per the PSA.

The CLS opinion was forwarded to PSFB on February 15, 2005. The opinion discussed the interpretations of the sections of the PSA pertaining to a school board's powers; their authority to carry out development activities; and PSFB's authority to approve agreements that require a school division to fully service lots as a condition of the sale.

CLS examined PSFB's options around authorization of the agreements by concluding that, *"The PSFB could decline to provide the approval required to permit this project to proceed. However, given that the PSFB did not question the capacity of the Division to proceed with Phase I of the project, and the well-advanced status of [the Grady Bend phase] of the project, such an approach may be problematic."* CLS recommended that it may be appropriate for PSFB to develop a policy statement to provide school divisions with an indication of PSFB's expectations regarding requests to dispose of land.

It is of interest to note that a June 1998 CLS opinion provided to the SFB discussed responsibilities and powers of school boards under the PSA. It was CLS's opinion that if the PSA does not give a school board a specific power or impose upon it a specified duty to enable the school board to engage in an activity, then it is beyond a school board's ability to engage in that activity. This opinion was not shared with school divisions.

The LMS analysis and the CLS opinion were available to PSFB when they approved the sale of the Grady Bend lots. Neither the analysis nor the opinion was shared outside of PSFB.

In early May 2005, subsequent to the public disclosure of SOSD's land development activities in Swinford Park, the Minister directed his Acting Deputy Minister to

conduct a review and to prepare a report on the financial and legal implications of the transactions undertaken by SOSD. The report included those transactions approved by PSFB relating to the acquisition and disposition of land by SOSD in Swinford Park and was completed in June 2005. Subsequent changes to the related acts and Departmental processes addressed the report's findings.

In August 2005, the Office of the Auditor General (OAG) received a letter that expressed concerns about the disposition by SOSD of the surplus lands in Swinford Park. These concerns related to the legality of a school division acting as a land developer; placing public funds at risk; and, whether SOSD had followed appropriate land disposition processes. Concerns were also raised relating to the appropriateness of the PSFB process for the awarding of a new high school to SOSD and whether or not PSFB, who was responsible for authorizing the dispositions, had ensured that the appropriate processes were followed in the Swinford Park dispositions. These concerns, along with issues related to alleged conflicts of interest as well as a related citizen complaint to the Minister from 2004, had been the subject of debate in the Manitoba Legislature in May and June of 2005.

Based on these concerns, on January 30, 2006, the OAG sent letters to the Minister of Education, Citizenship and Youth (Minister), the Chairperson of PSFB and the Chairperson of SOSD advising them that the OAG would be conducting an audit of the acquisition and disposition of the Swinford Park properties. The audit was also designed to address the awarding of the new high school and to determine if there were other land transactions.

3.2 Land Acquisitions

Objective 1: To determine whether SOSD was in compliance with The Public Schools Act (PSA) in the acquisition of properties for future school needs.

Observations

- Prior to the June 2006 amendments discussed in **Section 2.4**, the PSA allowed school divisions to purchase land for future school needs without approval from PSFB. SOSD had acquired land in Leila North, Swinford Park and River Ridge.
- On December 19, 1988, SOSD purchased approximately 16 acres of land in the Amber Trails area of North Winnipeg (Leila North). They built an elementary school on part of the land with approximately 6 acres remaining vacant.
- In January 2001, SOSD undertook to identify a suitable site for a new high school as the existing West Kildonan Collegiate Institute (WKCI) was

in need of major renovations and had severe limitations as a high school facility. In March 2001, SOSD advised PSFB that they had purchased approximately 21 acres of land in the Riverbend area of Winnipeg known as Swinford Park, for a future school site. Although 8 to10 acres are considered adequate to accommodate a high school site, the configuration of available land and the requirement for publicly acceptable access to the site required the purchase of additional property.

- In November 2004, SOSD purchased land in the River Ridge area of Winnipeg for the future construction of a replacement for WKCI. This purchase was necessary as PSFB, at this time, was supportive of SOSD's request to build a replacement high school and it had been determined that the Swinford Park site was not acceptable due to community opposition to the construction of a high school on that site.

Conclusion

- SOSD was in compliance with the PSA in the acquisition of properties for future school needs. Prior to June 2006, the PSA allowed school divisions to acquire land for future school needs without PSFB approval.

3.3 Swinford Park

We looked at the Swinford Park transactions from the perspective of both SOSD and PSFB as follows.

Objective 2: To determine whether SOSD'S disposition of the surplus school lands in Swinford Park was in compliance with the PSA and the PSFB Disposition Policy.

Objective 3: To determine whether PSFB policies, procedures and practices were adequate to ensure the Swinford Park transactions were in compliance with the PSA and the PSFB Disposition Policy.

Observations

- The PSA requires School Boards to obtain prior authorization from PSFB for the disposition of any land or buildings owned by it. PSFB may require that the proceeds realized from the disposal be paid to the Education Support Fund.
- The process for the disposition of surplus school properties is governed by the PSFB Disposition Policy. This policy requires, amongst other things:

- School divisions to survey for the purpose of determining a governmental need and to review any proposals related to educational, recreational, or cultural needs within the community;
- School divisions to prominently advertise for the sale and/or lease of the property for four consecutive months with a further two months to allow for belated submissions;
- School divisions to meet with PSFB to review all proposals received and to provide PSFB with the school board's recommendation; and
- PSFB to approve the successful bidder and to set amounts of the proceeds to be shared with divisions or authorize the retention of all proceeds by the divisions.

- Between 1998 and December 2000, discussions took place between SOSD and PSFB relating to renovations and additions to the existing WKCI which had been formed in July 1997 by an amalgamation of the Edmund Partridge and Centennial Schools. SOSD had documented concerns over a number of years regarding the inadequacy of the WKCI facility relating to: age and condition; ancillary spaces for technology programs; and school grounds/sports fields. Changing demographics in the school division, notably an increasing population in the Riverbend and surrounding area, left WKCI some distance from its main catchment area. While PSFB had approved renovations for the existing WKCI, SOSD believed that a new facility would be more cost effective than renovating the existing WKCI facility and was continuously seeking PSFB support for such a project.

Early Initiatives

- In September 1998, following a provincial government news release on addressing capital needs through the Aging Buildings Program, SOSD requested PSFB assistance in evaluating the condition of the Centennial School wing of WKCI. Subsequently, PSFB authorized SOSD to hire an architectural firm to undertake a study of the Centennial School building. In January 1999, the study concluded that renovations to the Centennial School were not economically viable.
- In May 1999, SOSD requested that PSFB approve renovations to the Edmund Partridge School wing of WKCI as a temporary measure to meet immediate program needs. In June 1999, PSFB accepted the architect's conclusions regarding the Centennial School wing and approved a renovation of classrooms in the Edmund Partridge School wing to provide suitable facilities for technology programs. They noted that ongoing planning to address replacement of the Centennial School building was needed.

- In June 2000, SOSD requested that PSFB assign a project officer to work with the division on the renovation of WKCI including replacement of the Centennial School building. Discussions continued and SOSD noted the severe limitations of the existing WKCI site as a high school. These limitations included increasing enrolment, poor condition of the building, and inadequate facilities. Amongst other things, a need existed for technology and applied arts programming, sports facilities, and special needs programming.
- In early 2001, SOSD began a school site selection process and as they did not have expertise in this area they engaged an external consultant, a qualified community planner/developer (Planner) to oversee and manage the project.
- In early January 2001, the SOSD Board requested the Planner to prepare an analysis of possible high school sites. The Planner recommended that a site located in the Riverbend area of Winnipeg between Murray Avenue and Woodbine Avenue, west of Donan Street, as the site best suited for a new high school and he outlined certain advantages and development considerations. Following his report, the Planner was engaged by the SOSD Board to produce a conceptual site plan for a possible future school.
- On January 18, 2001, SOSD advised PSFB of its intent to purchase land for a school site in the hope of building a new high school and also served notice of its intent to request that PSFB reimburse SOSD for all reasonable expenses incurred in the purchase.
- The Planner presented the SOSD Board with a report dated January 22, 2001, which outlined three site plan options for the Donan Street site for Board consideration. This site later became known as the Swinford Park development.
    - For each site development option a conceptual plan was completed that illustrated the layout for school and athletic facilities, site access and parking.
    - Where land was not utilized for school purposes, possible residential development concepts were illustrated.
    - For each option, the Planner provided estimated costs for the land purchase, installation of infrastructure services (including street paving, water and sewer services, hydro, telephone and gas utilities), development agreement costs and estimated revenue potential.
- In this report, the Planner also recommended that SOSD purchase all of the 21.3 acres of available land in order to provide the greatest flexibility

for locating the school on the site, as well as addressing future school expansion needs while retaining the option to dispose of any surplus lands for residential or other compatible uses. The Planner also stated that it would be financially advantageous for SOSD to purchase all of the available land at this time.

- In interviews with SOSD Board members we were informed that the Board's first priority was to purchase a future high school site. While they embraced the Planner's concept of developing the surplus land into residential lots, and believed that revenues from lot sales could offset the cost of the school site property and perhaps provide a small profit, they had not made a commitment to be the residential developer at this time.
- In February 2001, SOSD requested that PSFB reconsider the WKCI renovation project and support the construction of a new high school in the Swinford Park area. Between February and December 2001, SOSD continued to provide PSFB with information and statistics related to the proposed new WKCI.
- In a Board motion, known as a Motion Record, dated March 23, 2001, PSFB acknowledged that SOSD had withdrawn its request for the redevelopment of the existing WKCI and instead was seeking approval to construct a new high school to replace WKCI.

Acquisition

- On March 28, 2001, SOSD advised PSFB that they had recently acquired 21 acres west of the current Red River School site in anticipation of proceeding with the new high school. These acquisitions were made through land purchase agreements that had been entered into in February 2001, some of which were not completed until July 2003.
- SOSD also advised PSFB that they had engaged a Planner to assist them in preparing an application to rezone the property to permit the building of a school and for the development of the site that would include: "...sharing costs of upgrading streets, residential development, possible location of the school...".
- On June 11, 2001, the Planner submitted a development application with a proposed plan of subdivision to the City of Winnipeg (City) to rezone and subdivide land in Swinford Park for a future high school site, a park, and an adjoining 46 lot residential development complete with fronting street. The application noted that a different plan with more lots may be submitted later.

- The City advised the Planner that they opposed the application due to the increased traffic and noise that a high school in the area would produce. Further, the development plan did not provide access to the school site that would be acceptable to the City.
- Between July 2001 and September 2002, community meetings were held involving SOSD, Swinford Park community residents and the Lord Selkirk-West Kildonan Community Committee to provide the residents with an opportunity to voice their opinions related to the project. Community residents were provided with presentations, information bulletins, surveys and were invited to indicate their preferences from a selection of site development options. An analysis of the residents' responses was undertaken by SOSD and it was determined that the community did not support the building of a high school on this site. SOSD incorporated the citizens' concerns in their final development plans. At the community meeting on September 10, 2002, SOSD told the community that the site would be held for a future junior high school.
- In January 2002, based on an assessment and a recommendation by PSFB staff, PSFB denied SOSD's request to construct a new WKCI. SOSD was notified of the PSFB decision on February 6, 2002.
- Between February and September 2002, SOSD entered into agreements to acquire land from private landowners for the purpose of providing access to the school site in Swinford Park acceptable to the City and the community. The agreements called for SOSD to hold certain lands in trust for some of the landowners and incorporate them into their plan of subdivision. Pursuant to the agreements, SOSD subsequently either returned the lands held in trust to the land owners or sold the land on their behalf.
- We reviewed the agreements, and using WLTO records, we traced all related transactions for these land titles from the original owner through to the final title holder. We determined that these transactions, while complicated, were fully documented, were in compliance with the agreements, and we found no evidence to suggest that anyone unduly benefited from these transactions. None of the following were listed as title holders: the Minister; the Deputy Minister; the SOSD and PSFB board members; SOSD and PSFB senior management.
- When asked why SOSD continued to accumulate parcels of land after PSFB had advised that their request for a new high school had been denied, we were told that SOSD believed that due to changing demographics they would still require the assembled properties for a future elementary or junior high school with suitable access to the site.

- On September 25, 2002, City Council adopted and approved the Swinford Park development agreement between SOSD, as the developer, and the City.

Authorization to Dispose

- On January 20, 2003, SOSD requested PSFB's authorization to dispose of approximately 10 acres of vacant land in Swinford Park. The request stated that SOSD hoped *"... to sell the excess land to developers or builders in the near future."*
- In February 2003, PSFB staff assessed this request and recommended that PSFB authorize the sale of the surplus land and that SOSD retain all proceeds. During this time, PSFB met with the Board of SOSD to discuss several matters including a review of PSFB's Disposition Policy and the sale of this land.
- On March 12, 2003, PSFB advised SOSD that they had passed a motion on February 26, 2003 authorizing the disposition of the Swinford Park property as requested. SOSD was to *"... follow the normal surplus property disposition guidelines [Disposition Policy] as established by the PSFB"* and that the *"final purchase and sale agreement be submitted to PSFB for approval prior to closure of the sale for each property"*.
- Section V, Subsections 3.2 and 3.3 of the Disposition Policy required that, following the tendering of the lots, SOSD was to formally notify PSFB of all tenders received and provide PSFB with its recommendations. PSFB and SOSD were required to then arrange a meeting to review the tenders received. In interviews with PSFB and SOSD, we were told that the tender results had not been submitted to PSFB and that no meeting relating to the tender results had been held. SOSD did not provide this information as required and PSFB and its staff did not follow up to ensure that the motion and the Disposition Policy had been complied with.

Disposition Policy

- PSFB staff advised us that dispositions of surplus property are normally minor transactions and often only one bid is received. PSFB's major decision criterion is whether or not the property is surplus, and if so, the Board's decision is to approve or not approve the sale. Despite the requirements of the Disposition Policy, PSFB seldom receives all tender documentation for surplus property dispositions and never meets with school divisions to discuss the tenders received for such dispositions. PSFB does, however, receive correspondence from school divisions requesting approval of the sale to the recommended bidder.

- We were provided with a January 1994 CLS legal opinion, by PSFB staff, which dealt with the issue of whether or not a school division is in compliance with the Disposition Policy when it chooses to bring forward only one of several tenders. A school division had argued that PSFB had no role to play in the selection process and that PSFB's only role was to approve or disapprove the recommended tender brought forward by the school division. The legal opinion in part, stated that:

  > *"In my view, the School Division did not act in accordance with the disposition guidelines* [Disposition Policy]. ***However, that in itself may not mean it can be compelled to conform with those guidelines."*** [bolded in original]

- In an interview a PSFB staff member told us that, based on the 1994 legal opinion, the Disposition Policy was just a guideline and as such has no effective power and school divisions do not have to follow it. In interviews Department staff told us that the Disposition Policy was in fact a policy and not a guideline.

- We were told by some PSFB staff that the Disposition Policy only pertains to school board property used for educational purposes such as school buildings and property for which PSFB had provided funding and that other school board property such as maintenance facilities and bus garages are allowed to be sold without PSFB approval.

- This interpretation of the disposition process is contradicted by the PSA. Section 174(1) of the PSA states that *"...the school board of a school division shall not dispose of any land or buildings owned by it, or any interest or right therein, by way of sale, lease, gift or otherwise, unless it first obtains the authorization of the finance board [PSFB]...".*

Development

- On April 3, 2003, the Planner wrote a letter to SOSD and PSFB staff regarding the sale of 72 residential lots in the Swinford Park subdivision. When interviewed, the Planner told us that the purpose of the letter was to recommend a change in the normal PSFB disposition process, as that process "handcuffed" SOSD's ability to take advantage of the good market conditions. The letter recommended that a bid form acceptable to PSFB and SOSD be prepared and that the advertising period for bidders be shortened from 4 months to 30 days.

- In interviews we were told that PSFB believed that the letter of April 3, 2003, was only requesting a shortening of the normal PSFB advertising time frame. They believed that the letter indicated that both SOSD and the Planner had an understanding of the Disposition Policy and were going

to dispose of the surplus property in an "as is condition", referencing a paragraph on page 3 of that letter where the Planner reiterated the normal disposition process.

- However, in our examination of the letter, we noted that PSFB was provided with the following information regarding SOSD's intended land development activities and deviation from the normal disposition process. The letter provides the following information preceding the "as is condition" statement:
  - The reference line stated that the subject matter of the letter was the sale of residential lots;
  - The City Council approved residential subdivision was described as being comprised of two phases. The first phase was to consist of two cul-de-sacs having a total of 58 single family residential lots. The second phase was to consist of a street connecting the two cul-de-sacs with a planned total of 14 lots and a 12 acre school site; and
  - A total of 56 lots would be owned by SOSD with the remaining 16 lots owned by private individuals.
- The letter provides the following information subsequent to the "as is condition" statement:
  - A lengthy delay in the advertising and decision process would diminish builder enthusiasm because construction of services by SOSD would be delayed until the fall and house sales and construction until the summer of 2004;
  - SOSD preferred the pre-sale of lots prior to initiating construction; and
  - All builders were aware that the current market supported a base price in the range of $790 per front foot.
- On the same day, April 3, 2003, an SOSD staff member and a PSFB staff member met with the Planner and discussed the Planner's recommended process for the public sale of residential lots. In interviews we were told the following:
  - The PSFB staff member told us that his understanding from the meeting with the Planner and SOSD staff was that SOSD was selling parcels of "staked" land and that there had been no discussion that SOSD was going to do any servicing of the lots. The PSFB staff member explained "staked" land as being undeveloped land.

  - The Planner stated that based on the discussions that took place at the meeting, he believed that the PSFB staff member was fully aware of SOSD's plans to develop and sell fully serviced residential lots.
  - The SOSD staff member, although he could not recall details of the discussions of the meeting, noted that the reserved bid price of $790 per front foot, as stated in the Planner's letter of April 3, 2003 would have indicated that these were fully serviced lots.

- On April 7, 2003, the SOSD Board passed a motion to accept the Planner's recommendation for the public tender and sale of the Swinford Park residential lots on a block basis and to request that PSFB authorize SOSD to shorten the public tender period to no more than 30 days. This request, with a copy of the Planner's letter of April 3, 2003 attached, was forwarded to PSFB on April 8, 2003.
- On April 9, 2003, PSFB authorized the shortening of the tender period to one month with no extensions.
- In interviews with SOSD Board members and staff, we were told that SOSD believed that PSFB was aware of their intentions to develop residential lots, based on the April 3, 2003 meeting with PSFB staff and the request letter of April 8, 2003. As PSFB passed a motion authorizing the reduction of the tender period as per the request, SOSD believed that PSFB was also authorizing SOSD to undertake the development.
- SOSD placed ads in the Winnipeg Free Press on June 7 and June 21, 2003 seeking tenders for the sale of residential lots in Swinford Park. Tender packages provided to prospective bidders stated that residential single family lots offered for sale in Phase 1 would be serviced by the school division with prepaid city and utility services. Tenders closed July 17, 2003.
- On July 23, 2003, after analyzing the tenders submitted by builders and individuals for the purchase of the Swinford Park lots, the Planner recommended to SOSD that all tenders be rejected. The Planner believed that if the tenders were accepted, the builders would take an unreasonably large portion of the profit. His view was that it would be more profitable to SOSD for them to complete the development. He also noted that the two major builders had indicated an interest in negotiating agreements with SOSD for the purchase of all of the lots.
- In interviews with SOSD Board and staff, we were told that it was at this point that they became fully committed to being the developer and on September 8, 2003, based on the recommendation of the Planner, they awarded a contract for the construction of underground services, paving, and associated works for Swinford Park.

- SOSD did not seek a legal opinion as to whether or not they could undertake the development of residential lots. SOSD told us they believed that PSFB, their governing body, would not have authorized the sale of these lots if it had been contrary to the PSA.
- We reviewed CLS legal opinions from 1994, 1998 and 2005 which had been provided to PSFB and/or the Department. The opinions included discussion related to the powers of school boards. Excerpts from these discussions follow:
  - *"...if The Public Schools Act does not give a school board a specific power or impose upon it a specified duty to enable the school board to engage in an activity, then it is beyond a school board's ability to engage in that activity."*
  - *"...administrative entities only have the powers which are expressly or impliedly given to them by the Legislature, either in the statute which creates them or in some other statute or regulation."*
  - *"...the powers of school boards are limited to the powers granted by The Public Schools Act."*

  These opinions have not been shared with school divisions.

Disposition

- On September 16, 2003, SOSD entered into Lot Sale Agreements (LSAs) with builders for 41 lots. Addendums to the LSAs on October 29, 2003 and November 24, 2003 added an additional 13 lots. All agreements required SOSD to pay for the cost of services including electric, gas, telephone, sewer and water, drainage, and roads. SOSD approved the LSAs between September 29 and December 8, 2003.
- The LSAs contained a clause that could have delayed payment of the balance of the purchase price to SOSD up to twelve months after the closing date of the sale, or the date of the transfer of title from SOSD to the builder, whichever occurred first. SOSD staff acknowledged that a downturn in the real estate market may have resulted in SOSD not receiving full payment for the land transactions for up to one year, thereby resulting in a possible cash shortfall for the school division.
- On January 14, 2004, the SOSD solicitor provided the Winnipeg Land Titles Office (WLTO) the documentation required to register title to the lands assembled for the future school site in SOSD's name, and to register the plan of subdivision. The solicitor asked WLTO to review the documentation, and if acceptable, to advise of the subdivision plan number and associated registration costs.

- The plans of subdivision for the first two phases of the Swinford Park development were registered by WLTO on February 4 and March 9, 2004.
- Subsequently, pursuant to the LSAs, WLTO was requested to transfer title of the Swinford Park lots from SOSD to the ultimate purchasers. WLTO staff was aware that the sales had to be approved by PSFB, however, no documentation was provided to them to evidence that such approval had been given. WLTO then contacted SOSD's solicitor and requested written confirmation that the LSAs had been approved by PSFB.
- On April 29, 2004, a letter and a telephone call to PSFB staff by SOSD staff and solicitor, requested that PSFB confirm in writing that the Swinford Park LSAs had been approved. The solicitor was advised that PSFB staff would determine whether or not the sales had been authorized, and if not, the staff would bring the LSAs before PSFB on May 5, 2004.
- As noted earlier, the PSFB motion of February 26, 2003 required that SOSD provide PSFB with the LSAs for the Swinford Park properties prior to the closure of the sales. SOSD did not provide this information as required. In interviews with SOSD staff, we were told that the LSAs had not been forwarded to PSFB for approval due to an oversight on their part. PSFB did not follow up to ensure compliance with their motion.
- On May 3, 2004 SOSD couriered the LSAs that had been executed by SOSD and the builders to PSFB. Interviews with PSFB staff and a review of documentation determined that the LSAs had been received on May 3 but were not recorded in their mail log as would normally be the case. We determined that PSFB administrative staff receipted delivery of the LSAs, but we were unable to ascertain who subsequently took possession of them.
- We were advised that a meeting between the PSFB Chair and Executive Director was normally held the day prior to a Board meeting. Documentation confirms that such a meeting was held at PSFB on May 4, 2004 *"regarding various business matters"*. In interviews with these individuals, neither was able to recollect discussing the LSAs at that meeting.
- We were informed that at the regular Board meeting of May 5, 2004, the matter of the LSAs was brought forward as a "walk-on" item at the end of the meeting. This matter was not included as an agenda item for the meeting. In interviews, most Board members could neither recall who brought the matter forward, nor whether they had even seen the LSAs at the meeting. Nevertheless, the minutes of the meeting contain a motion authorizing SOSD to dispose of various parcels of land in Swinford Park as

per the LSAs. A reading of the LSAs makes it clear that SOSD was acting as the developer of the Swinford Park residential subdivision.

- We reviewed all records of PSFB meetings related to SOSD matters between January 2000 and February 2006. We observed that records only consisted of Motion Records. The Motion Record provides the motion and identifies the presenter of the motion, the mover and seconder. No information about the discussions undertaken by the Board or the rationale for their decision is provided.
- We were informed that on May 6, 2004, a PSFB staff member prepared a letter to SOSD advising them that PSFB had approved the LSAs. This letter was signed by the Chair and faxed to SOSD that same day.
- We were informed that a PSFB staff member became aware several days later that the May 5 Motion Record noted above, normally completed at the meeting, did not identify the presenter, mover and seconder. The staff member then requested clarification from the Executive Director who provided the names of the mover and the seconder, but not the presenter, and noted that the motion had been *"pre-approved only"* and was to be ratified at the next Board meeting on May 12, 2004.
- Normally, a notification letter would not be sent until after ratification of the Motion, however, as noted above, the letter to SOSD had already been sent on May 6, 2004.
- In interviews, only the PSFB Chair and Executive Director had any recollection of the urgency for approving the LSAs at the meeting of May 5, 2004, and that there was a belief that SOSD could face financial liability if their approval was not granted.

Authority to Develop

- On August 26, 2004 an SFB staff member reported to SFB management that, during a conversation with SOSD, the staff member had been told that SOSD had bought land, developed it, put in streets, and sold the property in deals worth millions of dollars. The staff member had been told by SOSD staff that PSFB was aware of these activities. The SFB staff member than asked SFB management if SOSD had the ability to undertake these activities under the PSA. SFB management advised us that the PSFB Executive Director was subsequently informed of this conversation.
- SFB staff was able to review the 2003 financial statements for SOSD which included a note relating to the Swinford Park development. The note stated that SOSD had negotiated a development agreement with the City for a subdivision in the Swinford Park area and that SOSD had awarded the tender to provide services for the future school site and adjacent building

lots. The note also stated that SOSD had sold all of the building lots in Phase 1 of the development for total proceeds of $1,840,000 and had committed to providing services for these lots in the amount of $670,000. In an interview, SFB staff stated when initially reviewing these financial statements the note did not raise any concerns.

- On September 8, 2004, PSFB was given a presentation by SFB staff that included a discussion relating to the disposition of properties by SOSD. This resulted in a decision to arrange a meeting with SOSD to discuss disposition of properties.
- On September 13, 2004, staff of SFB, PSFB and SOSD met to discuss SOSD's land development activities. SOSD was advised that they did not have authority under the PSA to develop land. SOSD was asked why they had chosen to develop land, what the financial risks had been, how much time administrators had spent on this activity, and what the cost had been to the school division? SOSD replied that there was no financial risk as all lots had been pre-sold and they had undertaken this activity because there was an opportunity to make more money than if they had just sold the property to someone else to develop. SOSD also stated that staff had spent considerable time on the project but did not quantify the time spent. SOSD noted that PSFB had approved the sale of the land by lot.
- In interviews, an SOSD staff member estimated that the accounting function utilized between 10% and 20% of their time on the project. Another SOSD staff member stated that while considerable time was spent on the project, most of the time was outside of regular hours.
- PSFB members stated in interviews that they did not know whether a school division could develop land. Board members further stated that they did not even consider that a school division would become involved in land development activity. They considered the administration of the Capital Support Program as their priority and the disposition of school property as a minor activity.

Development Assessment

- On September 14, 2004, SOSD advised PSFB that SOSD had passed a motion to sign the Grady Bend LSAs and requested that PSFB approve the sale and provide written confirmation of their approval in the same form as previously provided on May 5, 2004.
- On September 24, 2004, SFB advised PSFB that they had become aware of SOSD's September 14, 2004 request for approval of the Grady Bend LSAs. SFB staff suggested that PSFB utilize Land Management Services (LMS) to

perform a due diligence review in order to satisfy themselves that there was no financial risk associated with these sales.

- On October 26, 2004 PSFB requested that LMS prepare a forensic analysis of the completed phases and a feasibility/risk analysis of the Grady Bend phase of the Swinford Park subdivision. The LMS report was issued on February 4, 2005.
- On November 3, 2004, based on the recommendation of their staff, PSFB passed a motion to retain Civil Legal Services (CLS) to provide an opinion regarding the authority of PSFB to permit school divisions to participate in activities outside the defined general powers of school boards as set out in the PSA. The request to CLS was not made until January 18, 2005 and the opinion, as outlined in Section 4.0 above, was received on February 15, 2005.
- On March 16, 2005, PSFB passed a motion and advised SOSD that the September 14, 2004 LSAs had been approved. The PSFB motion required SOSD to make full disclosure of all associated revenue and expenses at the conclusion of the project and stated that no future land development projects of this nature would be approved by the PSFB Board.
- On May 3 and 4, 2005, all superintendents and school board members were informed by PSFB that the PSA provides a defined list of powers to school boards and that *"the development and sale of fully serviced residential building lots does not qualify as an eligible activity. School divisions are prohibited from acting as property developers under the powers granted to them under the Public Schools Act."*
- In interviews with PSFB and SFB staff, we were advised that although they were aware in September 2004 that SOSD's land development activities were outside of a school board's authority under the PSA, neither the Minister nor the Acting Deputy Minister were informed. In an interview, the Acting Deputy Minister stated that he became aware of SOSD's land development activities in May 2005.
- On May 4, 2005, PSFB staff faxed a copy of the CLS opinion to the Acting Deputy Minister of the Department.
- On May 5, 2005, WLTO completed registration of a plan of subdivision for the Grady Bend phase of the Swinford Park development.
- The accounting for the Swinford Park project had been maintained in a single account. The account netted revenue and expense items and did not differentiate between categories. The project accounting was included in the division's audited annual financial statements but only as a note to those financial statements. In interviews and a review of documentation

we noted that SOSD found it necessary to obtain financial information from the Planner when questions arose about Swinford Park's financial status.

- In March 2006, SOSD's external auditor completed an audit of financial information for each of the Swinford Park Subdivision Residential Development and the Swinford Park Subdivision Future School Site. The financial information included a full disclosure of all associated revenue and expenditures for the project between September 29, 2003 and January 31, 2006. SOSD had requested that the Planner prepare a report specifying an appropriate basis of cost allocation, given the nature of the expenditures incurred, for all of the expenditures that related to the residential development and to the future school site.
- Based on the cost allocations provided by the Planner, the financial information for the residential development disclosed a surplus of $512,118 and the financial information for the future school site disclosed an asset in land that cost $819,810. When the financial information for the residential development and the future school site are combined, expenditures for the project exceeded revenues by $307,692, but SOSD maintains an asset in the form of a serviced future school site.
- We did not undertake a review of these financial statements nor did we validate the reasonableness of the cost allocations provided by the Planner.

Conclusions

Seven Oaks School Division

- Given that residential land development activities by a school board are not specifically allowed for in the PSA, it is arguable that SOSD was not in compliance with the PSA when it undertook residential land development activities in Swinford Park. In the circumstances, it would have been prudent for the SOSD to have obtained legal advice before undertaking such activities.
- By not notifying PSFB of all tenders received, SOSD did not comply with Subsections 3.2 and 3.3 of Section V of the PSFB Disposition Policy. The tenders for the sale of the Swinford Park lots clearly outlined SOSD's responsibility to service the residential lots. Although all the tenders were rejected by SOSD, the submission to PSFB of the tender results followed by the required tender review meeting would have provided PSFB with an opportunity to intervene or discontinue the project in July 2003, prior to the commencement of development activities.

- PSFB's motion to authorize SOSD to dispose of surplus school lands in Swinford Park required that SOSD submit the Lot Sale Agreements (LSAs) to PSFB for approval prior to closure of the sale for each property. The LSAs for the sale of the Swinford Park lots clearly outlined SOSD's responsibility to service the residential lots. LSAs were not submitted to PSFB prior to finalization by SOSD. Had the LSAs been submitted to PSFB for approval prior to finalization, PSFB would have been provided with another opportunity to intervene or discontinue the project in September 2003.
- The disposition process utilized by SOSD did not comply with the PSA, the PSFB Disposition Policy nor the PSFB motion authorizing SOSD to dispose of the surplus school lands in Swinford Park. However, the land management and sale processes that were used by SOSD to dispose of the Swinford Park properties were not unreasonable. SOSD hired a reputable planner to provide land management expertise and oversee the project, obtained authorization from PSFB for the dispositions, and reduced the financial risk associated with developing a residential subdivision by pre-selling lots prior to undertaking the servicing of these lots.
- SOSD staff recognized that there is a risk of financial loss inherent in any land development activity. SOSD took steps which mitigated but did not eliminate the risk of loss of public funds expended in developing Swinford Park.
- SOSD's accounting for the Swinford Park transactions was not adequate to provide the SOSD Board and staff with sufficient information to determine the financial position of the project at a given point in time.
- The transactions between SOSD and the private landowners for the acquisition and disposition of the Swinford Park properties, while complicated, were fully documented and we found no evidence to suggest that anyone unduly benefited from those transactions.
- The end result of the Swinford Park land development by SOSD was a "net income" of $512,118 to the school division, however, this entire amount and an additional $307,692 remain invested in surplus land with a total net book value at January 31, 2006 of $819,810.
- None of the SOSD Board members or senior management were listed as title holders of the Swinford Park properties.
- Although some of SOSD's correspondence may not have been as clearly written as it could have been, we believe it provided the essential information required to understand SOSD's intentions to develop serviced residential lots in Swinford Park.

Public Schools Finance Board

- In our opinion, PSFB policies, procedures and practices were not adequate to ensure that SOSD's disposition of surplus school lands in Swinford Park were in compliance with the PSA. Given that residential land development activities by a school board are not specifically allowed for in the PSA, it is arguable that SOSD was not in compliance with the PSA when it undertook residential land development activities in Swinford Park. Based on meetings with and correspondence provided to PSFB by SOSD in April 2003, we believe that some PSFB staff knew or should have known of SOSD's intended development activities. Further, we believe that the PSFB Board members knew or should have known of SOSD's development activities no later than May 5, 2004, when they approved the Lot Sale Agreements (LSAs) submitted by SOSD. A reading of the LSAs would have made PSFB aware that SOSD was acting as a land developer.
- In our opinion, PSFB procedures and practices were not adequate to ensure that SOSD's disposition of surplus school lands in Swinford Park were in compliance with the PSFB Disposition Policy. The motion that approved the sale of the Swinford Park lots required SOSD to provide copies of the LSAs to PSFB for approval prior to their having been signed and completed and that the PSFB Disposition Policy be followed. PSFB did not have a formal process in place to follow up and ensure compliance with the requirements of their motions. In this instance, no follow up of this motion took place. Had PSFB followed up on this motion they would have given themselves the opportunity to intervene or discontinue the Swinford Park project.
- PSFB approved the LSAs as submitted in May 2004, without informing or consulting with the Deputy Minister and/or the Minister of the Department.
- There was considerable confusion at PSFB as to whether the PSFB Disposition Policy was a policy requiring compliance or a guideline with no effective power. As well, the PSFB staff and Board were not knowledgeable of the sections of the PSA that pertained to the PSFB Disposition Policy. This resulted in inconsistent application of the Disposition Policy.
- In our opinion, SOSD's correspondence to PSFB provided the essential information required to identify their intention to undertake land development activities in Swinford Park. Although we believe that in certain instances SOSD's intentions may not have been clearly communicated to PSFB, we found no evidence that SOSD intended to mislead PSFB, or to obscure its intended development activities from PSFB.

Had the PSFB staff undertaken a thorough review of that correspondence, we believe that SOSD's intentions would have been apparent.

- Neither the Minister, the Deputy Minister nor any of the PSFB Board members or senior management were listed as title holders of the Swinford Park properties.

3.4 Other Land Development

Objective 4: To determine whether SOSD had undertaken land development activity prior to Swinford Park and/or was planning any further land development activity.

Observations

- In December 1988, SOSD purchased approximately 16 acres of land in North Winnipeg (Leila North) for future school needs. After building an elementary school on a portion of the land, approximately 6 acres of the property remained vacant.
- On January 20, 2003, SOSD made a request to PSFB for authorization to dispose of the approximately 6 acres of surplus land in Leila North. The request also stated that the school division wanted to explore their options for sale and/or development and sale of the property.
- Based on a written assessment by PSFB staff, PSFB passed a motion on February 26, 2003 authorizing SOSD to dispose of the land in accordance with the PSFB's Disposition Policy and to keep 100% of the net proceeds of the sale.
- SOSD took no subsequent action to dispose of this surplus land.
- On January 12, 2004, SOSD wrote PSFB requesting approval for the establishment of a Capital Reserve for the purpose of future land development at the Leila North site. Documentation reviewed indicated that SOSD was considering options relating to the development of this site. Also, SOSD's 2003/04 divisional plan dated January 26, 2004 indicated that a senior staff member had been assigned the responsibility of exploring a joint venture with a developer.
- On September 3, 2004, SOSD notified PSFB that rather than setting up a Capital Reserve as previously requested, they would be retaining those funds in their operating account to be used for future land development.
- In interviews with SOSD staff, we were informed that exploratory talks had been undertaken with a developer, however, the level of participation, if any, in a future development plan had not been determined.

- In interviews, SOSD advised us that they discontinued their discussions regarding the development of the Leila North site after they were advised of the PSFB motion of March 16, 2005 which indicated that, after the authorization of the sales of the final phase of Swinford Park, no further land development projects of that nature would be approved by PSFB.
- Other than land development in Swinford Park and the exploration of land development options in Leila North we found no other instances where land development was either being contemplated or had been previously undertaken.

Conclusions

- SOSD had not undertaken land development activities prior to Swinford Park. SOSD was not planning any further land development activities other than Leila North.
- In compliance with the PSA, SOSD obtained authorization from PSFB for the disposal of the surplus Leila North property.
- The PSFB staff did not recognize SOSD's intention to explore future development of the surplus Leila North property. SOSD was exploring options for the development of the Leila North property and indicated this to PSFB when they requested PSFB's authorization to set up a Capital Reserve.

3.5 Other Dispositions

Objective 5: To determine whether SOSD had undertaken other dispositions of surplus school lands and if so, whether the dispositions were in compliance with the PSA and the PSFB Disposition Policy.

Observations

- The only other disposition of surplus property was the Red River School site.
- The Red River School site was a 5-acre parcel of land owned by SOSD located in the Riverbend area of Winnipeg. SOSD had considered this location as a potential site for a new high school. The site was rejected by SOSD as being too small and not appropriate for the future development of a high school site. The City of Winnipeg (City) had expressed interest in the site as they wished to expand the Red River Community Club that was located next to the school site.

- SOSD requested authorization from PSFB to turn the Red River school site over to the City for the expansion of the Red River Community Club.
- PSFB passed a motion on February 14, 2001 declining SOSD's request and directed SOSD to dispose of the site in accordance with the Disposition Policy. The motion included a reminder to SOSD that net proceeds from the sale of all schools constructed prior to 1967 were to be distributed on a 50/50 basis between the school division and PSFB.
- In a letter dated September, 17 2002, SOSD outlined in detail the steps followed pursuant to the Disposition Policy for the sale of the Red River School site. The property was advertised commencing May 2001 and an offer of $150,000 was received in November 2001 and was rejected. In September 2002, the City agreed to purchase the site for a price of $250,000. SOSD recommended that PSFB approve the sale to the City.
- On January 8, 2003, PSFB passed a motion authorizing SOSD to sell the Red River School site as requested and that SOSD provide an accounting of all direct costs associated with the transaction and that 50% of the net proceeds be remitted to PSFB.
- SOSD did not remit the 50% share of the net proceeds of the sale of the Red River School site.
- On December 9, 2003, during a routine follow-up of PSFB's January 8, 2003 motion, SFB staff questioned PSFB staff as to whether SOSD could retain all of the net proceeds from the sale of the Red River School site or if SOSD was still required to remit 50% to PSFB. SFB staff advised that if PSFB passed a motion to retroactively allow SOSD to retain the proceeds, then SOSD would have to obtain permission to establish a Capital Reserve account for the proceeds.
- On January 13, 2004, SOSD requested PSFB permission to establish a Capital Reserve for SOSD's share of the net proceeds of $237,162 from the sale of the Red River School site. There is no record of PSFB dealing with this request.
- On September 3, 2004, SOSD then requested PSFB permission to use the entire net proceeds of $237,162, as well as $51,864 from the sale of another property, to establish a Capital Reserve totalling $289,026 for the future WKCI building project. A PSFB motion dated September 15, 2004 authorized SOSD to establish a Capital Reserve in this amount. We found no evidence to indicate that PSFB had ever rescinded their motion of January 8, 2003, thereby relinquishing their share of the net proceeds of the sale of the Red River School site.

Conclusions

- SOSD had undertaken one other disposition of school land at the Red River school site.
- In compliance with the PSA, SOSD obtained authorization from PSFB for the disposal of the surplus Red River School site.
- SOSD provided PSFB with all information required under the PSFB Disposition Policy in a timely manner and fully complied with all requirements of the Disposition Policy in disposing of the surplus Red River School site. By complying with all the Disposition Policy requirements SOSD indicated that they were aware of the disposition process.
- PSFB had no policy or process in place to ensure that their motions were followed up. PSFB staff did not follow-up on the PSFB motion requiring that SOSD remit 50% of the net proceeds of the sale of the Red River School site to PSFB.
- If PSFB had been advised by their staff that they were required to rescind the motion that required SOSD to remit 50% of net proceeds of the sale of the Red River School site, they took no action to do so. If PSFB had not been advised, then their staff did not provide the Board essential information in a timely manner.

3.6 New High School

Objective 6: To determine whether PSFB's decision process to approve a new high school to replace West Kildonan Collegiate Institute (WKCI) was clear and transparent and whether that decision process had been influenced by relationships between individuals at PSFB and SOSD.

Observations

- In February 2005, SOSD was awarded a new high school to replace the existing WKCI which had been formed in July 1997 by an amalgamation of Edmund Partridge and Centennial Schools. This award was the culmination of ongoing discussions between SOSD and PSFB between 1998 and 2004.
- Between September 1998 and June of 2000, SOSD worked and planned with PSFB to resolve concerns over the severe limitations of the existing WKCI site as a high school. In May 1999, SOSD requested that PSFB approve renovations to the existing WKCI as a temporary measure to meet immediate program needs. SOSD continued to believe that a replacement high school was necessary to resolve these limitations.

- In early January 2001, SOSD hired a Planner to produce a conceptual plan for possible future school sites. The Planner produced a report providing projected preliminary budget costs to SOSD for each of three options the Planner had considered.
- In February 2001, SOSD officially requested support for a new high school in the Riverbend area of Winnipeg and withdrew its request for the renovation of the existing WKCI. Between February and December 2001, SOSD continued to provide PSFB with information and statistics related to the proposed new WKCI.
- In January 2002, based on an assessment and a recommendation by PSFB staff, PSFB denied SOSD's request for a new WKCI and made a number of suggestions including:
    - A realignment of the catchment areas for the high schools of the school division;
    - Limiting WKCI enrolment;
    - A project that would result in the replacement of certain elements of the Centennial School; and
    - Encouraging the school division to identify alternative strategies to provide additional middle years student capacity now that the existing WKCI would not be available for use as a middle school.
- In March 2002, PSFB recommended to the Minister that SOSD be authorized to hire a consultant to design an addition/renovation to WKCI. PSFB staff had assessed the cost of renovating the existing WKCI at $5.5 million at that time.
- On March 27, 2002, the Minister approved the addition/renovation project for WKCI.
- In June 2003, SOSD submitted the sketch plans for the addition/renovation project at WKCI which were subsequently approved by PSFB in September 2003. At that time, SOSD received authorization to proceed to develop working drawings for the project.
- In March 2004, PSFB approved the working drawings submitted by SOSD for the addition/renovation project at WKCI and authorized SOSD to proceed to tender the project.
- In May 2004, tenders for the addition/renovation to WKCI were received by SOSD. The tenders closed at a substantially higher cost than was anticipated. Projected costs of the addition/renovation were now estimated at $9 million, while the projected costs for a new high school were estimated at $13.7 million. PSFB has had a long-standing practice to

build new when addition/renovation costs exceeded 50% of replacement costs. The addition/renovation project would have cost approximately two-thirds of the cost of a new school.

- On June 29, 2004, PSFB met with SOSD and the Planner to review the WKCI addition/renovation project. At the meeting SOSD urged PSFB to reconsider the addition/renovation project and instead construct a new high school. In interviews PSFB Board members told us that it was at this time, considering the cost of renovations, that they were now in support of SOSD's request to construct a new high school.
- In a submission to Treasury Board in August 2004, PSFB requested authorization to proceed with a new high school in the Riverbend area at an estimated cost of $13.715 million. In November 2004, Treasury Board authorized PSFB to proceed with the project. As $7.450 million had been previously allocated to the building/renovation project, a further $6.265 million was debentured for the new WKCI.
- Both the City and the community had opposed construction of a high school on the Swinford Park site. As a result, alternate locations for the high school were sought. In November 2004, SOSD entered into an agreement, subject to PSFB approval, to purchase 13 acres of land in the River Ridge area to accommodate the new high school.
- On January 13, 2005, a PSFB staff member prepared an assessment for PSFB, and suggested that they recommend to the Minister that the project be awarded. The assessment noted that PSFB had referred the purchase agreement for the site acquisition to CLS for review and that the school division had hired an agent to test the land for possible environmental hazards.
- On January 19, 2005, PSFB passed a motion based on this assessment, to:
  - Approve SOSD's request for a new high school with stipulated sizes of classroom and ancillary spaces; and
  - Approve support for up to 8 acres of land including related development costs.
- An attachment to the motion showed the calculated total cost to be $13,700,042 and recognized that SOSD would exercise its option to purchase additional space as per the Capital Support Program.
- In February 2005, upon the recommendations of PSFB, a Ministerial award was made for a new high school to replace the old WKCI.
- We found no evidence to indicate that PSFB's decision to authorize the construction of a high school to replace the existing WKCI was influenced

by any relationships between PSFB and SOSD individuals, but rather the decision was the result of the process described above.

- PSFB does not utilize a documented formal rating system to prioritize major capital projects. Rather, based on the PSFB Prioritization Guide and knowledge of school division needs, the PSFB staff developed a shortlist of priority projects that had been identified by school divisions. After a review of the staff shortlist and a consideration of available capital funding, the Board approved which major capital projects were to be included in a submission for Treasury Board approval. Under this process there was no documentation to support the rationale used by PSFB to recommend certain major capital projects. Therefore we were unable to determine whether the WKCI project should have been approved as opposed to any other project.

Conclusions

- A major renovation of WKCI was recommended by PSFB in March 2002 and approved by the Minister. In February 2005, this decision was altered with PSFB's recommendation, approved by the Minister, to build a new high school rather than proceed with the renovation.
- In our opinion, PSFB's decision process to approve a major renovation of WKCI was not clear and transparent. PSFB had established criteria which were to be utilized in the prioritization of major capital projects and a significant number of the criteria specified by PSFB were applicable to the WKCI renovation project. However, PSFB does not utilize a documented formal rating system to prioritize major capital projects and, as a result, we were unable to ascertain how, or if, PSFB prioritized this renovation project against any other requested projects.
- In our opinion, the decision process to approve a new high school to replace WKCI was clear and transparent, based on PSFB policy, and was not influenced by relationships between individuals at PSFB and SOSD. The decision to build a new high school was reached following a lengthy process of exploring alternatives to new construction and culminated with the realization that renovations to the existing WKCI would not be cost effective.

3.7 Citizen Complaint

On May 3, 2004, the Minister received an email dated May 2, 2004, from a citizen inquiring as to what mandate school divisions in Manitoba have regarding the development of residential communities in their area. The citizen expressed concern that SOSD was acting as a developer, through a consultant, of a community called the Swinford development. The email also noted that the board minutes of the school division indicated that they were paying out large sums of money to contractors for installation of roads, sewers and all the other necessities required for building a community.

Objective 7: To determine whether the Department gave full and appropriate consideration to the citizen complaint with respect to Swinford Park.

Observations

- We determined that at the time of this complaint a specific process, internal to the Department, was in place to respond to complaints from citizens to the Minister. The steps followed by the Department in this situation were consistent with the internal process.
- On May 7, 2004, the Minister's Office forwarded a copy of the citizen's complaint to the Deputy Minister requesting a response for his signature by May 19, 2004.
- On May 11, 2004, the Deputy Minister sent a copy of the citizen's email to PSFB requesting that a response be drafted by PSFB's Executive Director for the Minister. Documentation confirmed that the copy was received at PSFB on May 13, 2004 and was further distributed to the PSFB Chair and the staff member responsible for SOSD.
- On May 19, 2004, the Deputy Minister requested that the Executive Director provide an immediate response addressing the citizen's complaint.
- On that same day, the Executive Director phoned an SOSD staff member in regards to the complaint. In an interview, the Executive Director told us that he asked the SOSD staff member how PSFB should respond. He stated that he had not asked the SOSD staff member whether or not any of the allegations in the citizen's complaint were true.
- We reviewed an email dated May 19, 2004 from the SOSD staff member to the Planner concerning his conversation with the Executive Director. The SOSD staff member noted that PSFB would respond to the citizen's complaint by stating that the citizen should deal with their local school board and city councillor and not with the Department. He also noted that this response was his suggestion.

- The Executive Director drafted a response and forwarded it to the Deputy Minister, on May 19, 2004. The response did not address the citizen's inquiry as to whether school divisions in Manitoba had the mandate to develop residential communities in their area or a specific concern that SOSD was acting as the developer in Swinford Park. The response simply recommended that the citizen deal with the school board and city councillor as suggested to the Executive Director by SOSD staff. The process in place did not require an advisory note or other information concerning the complaint to accompany the response.
- The response was then forwarded to the Minister's office on May 20, 2004 where it was reviewed by the Minister's staff.
- On May 26, 2004, utilizing the Executive Director's draft response, the Minister replied to the citizen complaint in an email stating that community development appeared to be a local issue and he encouraged the citizen to deal directly with the school division and city councillors.
- We were told that no documentation providing a rationale for the response was submitted. We were informed that as of June 2005, all responses to complaints to the Minister must have an advisory note attached identifying the issue being addressed and providing a rationale for the response.
- We were told that a new electronic document tracking system was implemented within the Department in the summer of 2006.

Conclusions

- The Department did not give full and appropriate consideration to the citizen complaint with respect to Swinford Park. In this instance, the Department's process for responding to citizen complaints did not identify the issues outlined in the complaint and did not ensure that the provided response addressed the issues in the complaint.
- The response drafted for the Minister by PSFB did not address the citizen's complaint. Had the response addressed the complainant's question relating to the authority of SOSD to act as a land developer, the Minister could have had an opportunity to address this issue and consider the Department's options at that time.
- The process of addressing citizen complains was changed in 2005 to improve information provided to the Minister by the Department.

4.0 Recommendations

Risk management is a key consideration in outlining the activities in which a school board may engage and at what points in the decision making process they must obtain PSFB approval. The legislation, regulations and other guidelines should reflect the risk tolerance that the government is prepared to delegate to school boards.

The 2006 amendments to *The Public Schools Act* and *The Public Schools Finance Board Act* as enacted through the Public Schools Finance Board and *The Public Schools Amendment Act* addressed most of our concerns. We recommend that the following additional areas be addressed:

- That the Department review and update *The Public Schools Act* to clearly define and specifically set out the activities that a school board can engage in and clearly specify that other activities are not permitted.
- That the Department update the *Policy Statement Governing the Disposition of Surplus Public School Properties* to ensure that the policy for the disposition of all school board owned property is in compliance with the PSA. This update should include specific procedures for the disposition of school buildings and sites, vacant land, and all other school division buildings not used for educational purposes.
- That the Department clarify that the *Policy Statement Governing the Disposition of Surplus Public School Properties* is in fact a "policy" rather than a "guideline". This could be done by incorporating the policy as a regulation to *The Public Schools Finance Board Act*.
- That the Public Schools Finance Board develop a formal process to ensure that Board motions are followed up and reported back to the Board on a timely basis.

5.0 Response from Officials

Department of Education, Citizenship and Youth

The Department accepts the recommendations presented by the Auditor General in the Report of the *Special Audit on Property Transactions in the Seven Oaks School Division.*

Operational Changes

In response to the Department's own Internal Review in May and June of 2005:

- School divisions are now required to report to PSFB annually on all land holdings and acquisitions. This report is part of the annual five year capital plan submission process.
- The PSFB has reviewed all internal administrative processes and adopted the department's document tracking system and procedures.
- PSFB and SFB staff annually review capital fund transactions and the notes to the audited financial statements provided by school divisions for the purpose of identifying unusual transactions and occurrences.
- Regular and frequent communications between the Executive Director of PSFB and Deputy Minister were established as part of routine business operations. This relationship was further formalized when the Deputy Minister assumed responsibility as Chairperson of the PSFB on June 13, 2006.

Recent Legislative Changes

As the Report states, most of the concerns of the Office of the Auditor General have been addressed by Government in its 2006 amendments to *The Public Schools Act* and *The Public Schools Finance Board Act.*

In 2006 amendments to *The Public Schools Finance Board Act*:

- New accountability provisions were added for the Public Schools Finance Board, requiring it to consult regularly with school divisions, develop multi-year operating plans, conduct an organizational and operating review every five years, and adopt a conflict of interest policy.
- The mandate of the Public Schools Finance Board in administering the capital support program for schools was fully described in the Act. The board must consider specific factors in making decisions about capital support. It must also prepare an annual funding plan for the capital support it provides.

- School divisions must submit a five-year capital plan to the finance board each year. New provisions were added to the Act to clarify how school divisions make submissions to the board for major capital projects.
- A school board cannot call for tenders on a major capital project until the finance board approves the project.
- The membership of the finance board is now three deputy ministers of the government with the chairperson of the Board being the Deputy Minister of the Department of Education, Citizenship and Youth.

In 2006 amendments to *The Public Schools Act*:

- School boards are required to obtain finance board approval before acquiring land. A corresponding policy change instituted in 2005 requires school divisions to report annually on all division land holdings.

Response to Special Audit Report Recommendations

In response to the additional recommendations included in this Report, the Department is undertaking the following actions:

Recommendation

That the Department review and update *The Public Schools Act* to clearly define and specifically set out the activities that a school board can engage in and clearly specify that other activities are not permitted.

Department Response

The Department is prepared to review the pertinent provisions of the legislation with its legal counsel to ensure that the intent is explicit and not subject to misunderstanding.

Recommendation

That the Department updates the Policy Statement Governing the Disposition of Surplus Public School Properties to ensure that the policy for the disposition of all school board owned property is in compliance with the PSA. This update should include specific procedures for the disposition of school buildings and sites, vacant land, and all other school division buildings not used for educational purposes.

Department Response

The Department has updated the Policy Statement Governing the Disposition of Surplus School Properties. A draft of the revised policy will be made available to school divisions in the 2007-08 academic year for review and consultation. A revised and expanded Policy Statement

Governing the Acquisition and Disposition of School Properties will be finalized by the PSFB following these consultations. The Policy will be supported by specific written procedures and practice requirements.

Recommendation

That the Department clarifies that the Policy Statement Governing the Disposition of Surplus Public School Properties is in fact "policy" rather than a "guideline." This could be done by incorporating the policy as a regulation to *The Public Schools Finance Board Act.*

Department Response

The PSFB, following the internal review undertaken by the Deputy Minister, has clarified that the Policy Statement Governing the Disposition of Surplus Public School Properties is in fact "policy" rather than a "guideline", and is to be followed.

Recommendation

That the Public Schools Finance Board develop a formal process to ensure that Board motions are followed up and reported back to the Board on a timely basis.

Department Response

The Department and the PSFB concurs with this recommendation and will develop a formal process to ensure that Board motions are followed up and reported back to the Board on a timely basis.

Appendices

Appendix A Glossary of Terms and Acronyms

Capital Reserve	A fund established to fund future capital expenditures. These funds are segregated and may be used only for capital projects.
Capital Support Program	This program consists of two overall programs: a Major Capital Program for construction of new schools and major addition/renovation projects; and an Ongoing Capital Program which includes financing for Roof, System, Structural, Portable and Access projects.
Civil Legal Services (CLS)	A Special Operating Agency of the Province of Manitoba responsible for providing a full range of high quality legal services, on a cost recovery basis, to its clients, namely the Provincial Government and its agencies, boards and committees and some Crown Corporations.
Education Support Fund	A fund established for the receipt and distribution of monies for the financing of public schooling in Manitoba that is administered by the Public Schools Finance Board.
Land Management Services (LMS)	A Special Operating Agency of the Province of Manitoba that provides real estate services to various levels of governments, departments, boards, commissions, corporations, agencies and clients.
Public Schools Finance Board (PSFB)	The Board is responsible for receiving all monies paid to the Education Support Fund for the financing of public schooling in Manitoba. It administers the Capital Support Program including the determination and disbursement of all capital grants provided to Manitoba school divisions under the Program. The Board is also responsible for approving the disposition of surplus school property.

Glossary of Terms and Acronyms

Appendix A

Schools' Finance Branch (SFB) The Schools' Finance Branch provides operating and capital funding to Manitoba's public school divisions/districts and operating funding to funded independent schools and ensures the maintenance of a relevant financial and funding framework and appropriate accountability mechanisms for Manitoba's K-12 public and funded independent schools (including finance, funding, and audits of public school divisions/districts and funded independent schools). SFB also provides accounting, financial and administrative services to the Public Schools Finance Board to assist the Board in carrying out its responsibilities for the capital support program.

Acronyms

City	City of Winnipeg
CLS	Civil Legal Services
Department	Department of Education, Citizenship and Youth
EAA	The Education Administration Act
LMS	Land Management Services
LSA	Lot Sale Agreement
Minister	Minister of Education, Citizenship and Youth
OAG	Office of the Auditor General
PSA	The Public Schools Act
PSFB	Public Schools Finance Board
SFB	Schools' Finance Branch
SOSD	Seven Oaks School Division
WKCI	West Kildonan Collegiate Institute
WLTO	Winnipeg Land Titles Office

Appendix B PSFB Approval Process

PSFB has established processes for the prioritization and approval of major capital projects. The PSFB Prioritization Guide lists project categories in order of priority as follows:

i. Emergencies/urgencies (new facilities or school replacements);

ii. New classroom space;

iii. Major renovations and upgrading;

iv. New facilities (other than classroom space); and

v. Other facilities (space considered ancillary to instructional areas).

The PSFB Prioritization Guide also provides several criteria to be considered for various projects, including:

i. Health and/or safety issues;

ii. Enrolments;

iii. Program implementation;

iv. Space utilization;

v. Building condition;

vi. Alternatives/options; and

vii. Cost implications.

The PSFB Process for Major Project Approval is as follows:

i. Project is requested by school division and the PSFB project leader conducts initial assessment of request and recommends/doesn't recommend project for inclusion in budget.

ii. If recommended following assessment, project is then included in budget for Treasury Board approval.

iii. Following Treasury Board budget approval, project leader conducts final assessment of project and recommends to PSFB that the Ministerial Award be prepared.

iv. Ministerial Award authorizes school division to hire an architect to prepare plans for approval by PSFB.

v. Sketch plans are received by project leader and report is submitted to PSFB approving the plans and authorizing the school division to proceed to working drawing stage.

PSFB Approval Process

Appendix B (cont'd)

vi. School division then submits working drawings and project leader prepares report to PSFB for approval of plans and authorizing the division to tender the project.

vii. School division sends tender results to PSFB for approval.

viii. PSFB authorizes support of low bid or formula support (which ever is the lesser amount). Project leader prepares Final Support Analysis.

ix. Building of new school or addition begins.

Appendix C Timeline of Events

The table below presents a timeline of events related to the development of Swinford Park.

Timeline of Events January 2001 to December 2004		
Date	**Initiated by**	**Event**
1998 - 2000	SOSD	Board discussions focusing on possible new high school site.
January 8, 2001	SOSD	Planner presents an analysis of possible high school sites to the Board with his recommendation.
	SOSD	Board engages Planner to produce a conceptual plan for possible future school sites.
January 18, 2001	SOSD	SOSD letter advises PSFB of intent to purchase land for a future high school.
January 22, 2001	SOSD	SOSD Planner's site selection report provides assessment and projected preliminary budget costs for three site plan options to the Board.
February 5, 2001	SOSD	SOSD letter requests that PSFB support construction of a new high school in the Swinford Park area.
March 28, 2001	SOSD	SOSD letter advises PSFB that SOSD engaged a Planner to assist in preparing rezoning application and development plans for a 21-acre school site to include: *"sharing costs of upgrading streets, residential development, possible location of the school".*
June 11, 2001	SOSD	SOSD submits development application to City of Winnipeg (City) to rezone and subdivide land for future high school site, park and adjoining residential development.
January 4, 2002	PSFB	PSFB staff prepares analysis of the need for the proposed new high school and recommends the request be denied.
February 6, 2002	PSFB	PSFB letter advises SOSD of January 23, 2002 motion to deny request for new WKCI.
April 15, 2002	SOSD	Planner reports to SOSD Board on Swinford Park. Report provides a revised site plan and implications of land purchase and/or development agreements for street connections. It recommends re-submission of the plan of subdivision and community consultation.
September 25, 2002	SOSD	City approves SOSD's Development Agreement.

Timeline of Events

Appendix C (cont'd)

Timeline of Events January 2001 to December 2004		
Date	**Initiated by**	**Event**
January 20, 2003	SOSD	SOSD letter requests PSFB's approval to dispose of 7 acres in Leila North and that it wants to explore options for the sale and/or the development and sale of the property.
	SOSD	SOSD also requests PSFB's approval to dispose of approximately 10 acres in Swinford Park. SOSD advises that it would like to sell to developers or builders in the near future.
February 13, 2003	PSFB	PSFB staff assesses SOSD disposition requests and recommends authorizing sale of both properties and retention by SOSD of all proceeds.
March 12, 2003	PSFB	PSFB advises SOSD that they authorized the disposition of the Leila North and the Swinford Park sites. SOSD to follow the normal surplus property disposition guidelines, submit the purchase and sale agreements prior to closure of the sale for each property and retain 100% of net proceeds.
April 3, 2003	SOSD	Planner sends letter to SOSD and PSFB staff regarding the sale of residential lots in the Swinford Park subdivision. The Planner notes that PSFB procedures require the sale in an "as is" condition and a four to six month advertising period. The Planner recommends that the advertising period be shortened to 30 days, thus allowing for the construction of services by SOSD during 2003.
	SOSD	The staffs of SOSD and PSFB meet with the Planner to discuss the Planner's recommended process for the lot sales.
April 8, 2003	SOSD	SOSD letter advises PSFB that the SOSD Board had accepted the recommendations of its Planner for the disposition of its surplus Swinford Park property as per the Planner's April 3, 2003 memo and requests PSFB's approval of a tender period of no more than 30 days.
April 23, 2003	PSFB	PSFB notifies SOSD that they approved a shortened tender period of one month with no extensions.

Appendix C (cont'd) Timeline of Events

Timeline of Events January 2001 to December 2004		
Date	**Initiated by**	**Event**
June 7, 2003 to July 17, 2003	SOSD	SOSD places ads in the Winnipeg Free Press seeking tenders for the sale of residential lots in Swinford Park. Tender package states that single family residential lots will be serviced by the school division.
July 23, 2003	SOSD	Planner recommends to SOSD that all tenders received be rejected and notes that by becoming the developer, SOSD could potentially maximize its return. SOSD begins negotiating agreements with two major builders for all the lots and becomes committed to becoming the developer.
September 8, 2003	SOSD	SOSD Board ratifies a contract for the construction of underground services, paving and associated works.
September 16, 2003	SOSD	SOSD signs Lot Sale Agreements (LSAs) with builders for the sale of 41 lots in Swinford Park. Agreements call for SOSD to pay for the cost of services including electric, gas, telephone, sewer and water, drainage and roads.
September 29, 2003	SOSD	SOSD Board passes a motion approving the LSAs.
October 29, 2003	SOSD	SOSD signs LSA with builders for the sale of 7 lots in Swinford Park.
November 24, 2003	SOSD	SOSD signs LSA with builders for the sale of 6 lots in Swinford Park.
January 12, 2004	SOSD	SOSD requests PSFB approve the establishment of Capital Reserves for future land development at Leila North site and Swinford Park school site.
January 14, 2004	SOSD	SOSD solicitor provides the Winnipeg Land Titles Office (WLTO) with required documentation to register the purchase and sale of the Swinford Park subdivision lots.
April 29, 2004	SOSD	Letter from SOSD solicitor notes that transfers of land, pursuant to LSAs signed by SOSD, are held by WLTO pending confirmation that PSFB has approved the LSAs. PSFB staff is asked to confirm PSFB Board authorization.

Timeline of Events

Appendix C (cont'd)

Timeline of Events January 2001 to December 2004		
Date	**Initiated by**	**Event**
May 3, 2004	SOSD	SOSD couriers LSAs to PSFB for authorization by the Board.
	Department	Minister's Office receives citizen complaint inquiring as to what mandate school divisions have in development of residential communities and is concerned that SOSD is acting as a land developer in Swinford Park.
May 5, 2004	PSFB	PSFB Board authorizes SOSD to dispose of various parcels of land in Swinford Park as per LSAs submitted.
May 19, 2004	Department	The Deputy Minister requests PSFB provide an immediate response in the form of a letter for signature by the Minister addressing the citizen complaint.
	PSFB	A PSFB staff member phones an SOSD staff member who suggests that the response letter state that the citizen should deal with the local school board and city councillor.
May 26, 2004	Department	The Minister replies to the citizen complaint by saying that community development is a local issue and he encouraged the citizen to address his concerns to the school division and city councillors.
August 26, 2004	Department	Schools' Finance Branch (SFB) staff becomes aware of land development activities by SOSD.
September 3, 2004	SOSD	SOSD requests permission to establish a Capital Reserve for the future WKCI and is retaining operating funds for future land development.
September 8, 2004	PSFB	PSFB and SFB staff meets and an arrangement is made to meet with SOSD to discuss disposition of properties.
September 13, 2004	PSFB	SFB, PSFB and SOSD staffs meet and discuss SOSD land development activities. SOSD advises that these activities are not appropriate for a school division.

Appendix C (cont'd) Timeline of Events

Timeline of Events January 2001 to December 2004		
Date	**Initiated by**	**Event**
September 14, 2004 to December 8, 2004	SOSD	SOSD completes the sales of the Grady Bend phase of Swinford Park and submits the LSAs for approval.
	PSFB	Prior to approving the LSAs, PSFB initiates a forensic review by Land Management Services of the completed phases of Swinford Park and a feasibility/risk analysis of Grady Bend.
	PSFB	PSFB passes a motion to request a legal opinion from Civil Legal Services to determine whether or not the board could authorize activities outside the defined general powers of school boards as per the PSA.

Powers and Duties of School Boards

Appendix D

The following is an excerpt from *The Public Schools Act* (C.C.S.M. c. P250):

PART III

POWERS AND DUTIES OF SCHOOL BOARDS AND EMPLOYEES OF SCHOOL DIVISIONS AND SCHOOL DISTRICTS

DUTIES OF SCHOOL BOARDS

Certain duties of school boards

41(1) Every school board shall

(a) provide adequate school accommodation for the resident persons who have the right to attend school as provided in section 259;

(a.1) provide, as may be directed or prescribed by the minister, appropriate educational programming for every

(i) pupil enrolled as provided for in section 58.4, and

(ii) resident person who has the right to attend school as provided in section 259;

(b) erect and maintain upon the school building or on the school grounds a flagstaff and shall cause the national flag of Canada to be

(i) flown on each day that the school is open, weather conditions permitting, or

(ii) prominently displayed in the school building when weather conditions do not permit the flag to be flown outdoors;

(b.1) ensure that each pupil enrolled in a school within the jurisdiction of the school board is provided with a safe and caring school environment that fosters and maintains respectful and responsible behaviours;

(b.2) establish a policy respecting the appropriate use of electronic mail and the Internet at schools;

(c) authorize the disbursement of any moneys that are to be expended or have been expended in accordance with subsection 53(4);

(d) publish, except in the case where a regulation made under section 193 applies, a summary or condensation of the annual financial report which summary or condensation shall not provide less information than the summary statement of revenue and

Appendix D (cont'd) Powers and Duties of School Boards

expenditure and the statement of financial position of the revenue fund as may be required under subsection (14) and state in the publication thereof that a copy of the audited financial report is available for inspection by any resident voter at all reasonable hours in the office of the secretary-treasurer and that the resident voter at his own expense, may make a copy thereof or extracts therefrom;

(e) except in the case of school districts to which the regulations made under section 193 apply, make available for examination and inspection in the office of the secretary-treasurer of the school board at any reasonable time by any resident of Manitoba a copy of

(i) the final budget for the current year or any year within the last five years as adopted by the school board and submitted to the Public Schools Finance Board, but excluding therefrom information that may be related directly to any individual employee or to any current negotiations in respect of employee remuneration or benefits, and

(ii) the audited financial statements of the school board for any year within the last five years prepared in accordance with the requirements of subsection (14),

and permit the resident, at the resident's expense, to make copies thereof or of extracts therefrom;

(f) arrange to deposit all school division or school district funds in an account established with a bank or credit union;

(g) subject as otherwise provided in this Act, employ teachers and such other personnel as may be required by the school division or school district;

(h) arrange for the payment of salaries at least monthly;

(i) subject to this Act and the regulations, prescribe the duties that teachers and other personnel are to perform;

(j) allow students enrolled in a teacher education course conducted to prepare persons to be certified as teachers under The Education Administration Act and approved by the minister, to attend any classroom of any school as determined by the school board and the teacher education institution, at any time when the school is in session for the purpose of observing and practice teaching;

Powers and Duties of School Boards

Appendix D (cont'd)

(k) admit at the opening of the fall term and at such times as the school board may by by-law establish, children beginning school pursuant to the provisions of Part XIV of this Act;

(l) in any published advertisement for the employment of a teacher, state

(i) if no schedule of pay is in effect, the salary or the basis of the salary to be paid to the teacher, or

(ii) if a schedule of pay is in effect, that the salary paid will be in accordance with the salary schedule for the school division or school district or with the collective agreement for the school division or school district, as the case may be;

(m) immediately notify the minister responsible for health of any case reported to the school board pursuant to clause 96(e);

(n) arrange to purchase textbooks for free distribution to pupils;

(o) select and purchase or rent school sites and premises, and build, repair, furnish, keep in order and regulate the use of the school buildings, lands, enclosures and movable property;

(p) determine the number, kind, grade, and description, of schools to be established and maintained;

(q) not yet proclaimed;

(r) determine the times when and the manner in which reports and other information respecting pupils shall be delivered or provided or made available by teachers under section 96;

(s) repealed, S.M. 1996, c. 51, s. 6;

(t) where it has knowledge thereof, report to the minister any teacher employed in a school within the jurisdiction of the school board who has been charged with or convicted of an offence under the Criminal Code (Canada) relating to the physical or sexual abuse of children;

(u) cooperate with schools to develop courses, programs and instructional materials, subject to the approval of the minister;

(v) provide to school advisory councils, local school committees and school committees any information that is reasonably necessary for their operation;

Appendix D (cont'd) Powers and Duties of School Boards

(w) provide the minister, at the times and in the form and manner he or she determines, such information as the minister may require;

(x) on an annual basis, report to the residents of the school division or school district, or in the case of the francophone school division, to parents of pupils who attend schools operated by it, any results of assessments of the effectiveness of educational programs;

(y) comply with directives of the minister;

(z) ensure that each school in the school division or school district prepares an annual school plan.

Disposition Policy

Appendix E

The following excerpt from the *Policy Statement Governing the Disposition of Surplus Public School Properties*, Section V, outlines the process to be followed by a school division and PSFB when disposing of surplus properties.

V DISPOSITION PROCESS

1.1 Following the final decision by a school board to close a school, in accordance with the Guidelines for School Closure, it shall advise The Public Schools Finance Board, prior to the effective date of closure that the property will become inactive.

1.2 In its written communication to The Public Schools Finance Board, the school board shall indicate whether the school board has any need of the property for divisional purposes, such as administrative facilities, teacher education centre, etc.

2.1 A meeting is arranged at which the school board and The Public Schools Finance Board discuss the future potential need of the property for school purposes, based on demographic data and other pertinent data developed by the school board and used as the basis for considering school closure.

2.2 In the event that The Public Schools Finance Board and the school division decide that the property is to be reserved for future school use, The Public Schools Finance Board will advise the school board accordingly and authorize the school board to advertise the availability of the property limited to a lease basis.

2.3 In the event that the decision reached is that the property will not be reserved for future school use, The Public Schools Finance Board will authorize the school board to advertise the availability of the property on a lease or sale basis. Concomitant with these activities, government will be surveyed for the purpose of determining a governmental need for the property.

3.1 In the advertising process, the school board will advertise the availability of the property by way of publication of four prominent advertisements (one each month for the first four months) in leading newspapers having a general circulation in the province and newspapers serving the local communities, supplemented by posters in various public buildings including municipal offices, in the communities.

3.2 Following the four-month advertising procedure and a further two months to allow for belated submissions, the school board shall formally notify The Public Schools Finance Board of all proposals received and advise The Public Schools Finance Board of its recommendations.

Appendix E (cont'd) Disposition Policy

3.3 A meeting will be arranged with the school board and The Public Schools Finance Board to review all proposals received including consideration of any governmental or municipal requirements.

4.1 In the review of proposals, reasonable consideration will be extended to lease or sale proposals submitted by potential user groups whose objectives are to meet educational, recreational, or cultural needs within the community. A few examples are as follows:
- adult education schools
- arts and crafts, music centre
- community cultural, recreational, day care, resource, museum, social service or library centres
- senior citizens' centre
- heritage centres.

4.2 Leases between the school board and community nonprofit organization(s) or municipal corporations should make provision to adequately cover all of the costs of operating the property including utilities, caretaking, maintenance, repairs, insurance, taxes, etc. The school board may require the organization to provide reasonable evidence that it is financially capable of meeting its financial obligations under a proposed lease agreement.

4.3 Lease agreements between a school board and a commercial corporation may provide for financial provisions, beyond the cost of operating the property as outlined in 4.2.

4.4 Proposed leases to be entered into are subject to the approval of The Public Schools Finance Board, in accordance with provisions of The Public Schools Act, prior to execution.

5. In cases where The Public Schools Finance Board approves proposals to purchase properties or authorizes acquisition of the property to serve provincial government requirements, ownership of the property shall be transferred accordingly. In all other cases, ownership shall be retained by the school board.

6. In cases where advertising the availability of properties fails to attract any proposals either for lease or sale, the school board shall so inform The Public Schools Finance Board and request further direction.

7. For the purpose of this policy:

"property" means the building(s) and/or the land upon which the building(s) is located

"school building" means a building constructed for school purposes that does or originally did contain classroom accommodation.